LIVINGSTON & COURDIN
EXPLORATION, INC.

IBLA 84-555 Decided September 12, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, increasing the rental rate for noncompetitive oil and gas lease W-82335.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Rentals

Where BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1) (1982).

APPEARANCES: Mike K. Bullock, Livingston & Courdin Exploration, Inc., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Livingston & Courdin Exploration, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 4, 1984, increasing the rental rate for its noncompetitive oil and gas lease W-82335.

Effective February 1, 1983, BLM issued a 10-year noncompetitive oil and gas lease to Herbert Allen for 2,443.37 acres of land 1/ situated in Uinta County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Effective February 1, 1984, BLM approved the assignment of the lease to appellant. The annual rental rate at the time of issuance and at the time of assignment was $1 per acre or fraction thereof. In its April 1984 decision, BLM notified appellant that all or part of the land included in lease W-82335 had been designated as within an undefined

1/ The land is described as lots 4 through 7, SE 1/4 SW 1/4 sec. 6, secs. 32 and 33; the E 1/2 sec. 34; and sec. 35, T. 15 N., R. 113 W., sixth principal meridian, Uinta County, Wyoming.

addition to the Church Buttes Field known geological structure (KGS) 2/ and that, pursuant to 43 CFR 3103.2-2, the annual rental rate would be increased to $2 per acre or fraction thereof "beginning with the lease year which starts at least 30 days from your receipt of this notice, and for each year thereafter through the fifth lease year." (Emphasis in original.)

In its statement of reasons for appeal, appellant contends that the terms set upon issuance of its oil and gas lease, including the annual rental rate, should "remain constant until expiration [of the lease] and then [the land can] be reclassified K.G.S. if new information warrants it." 3/ Appellant also intimates that the land should not be considered part of a KGS where the "nearest production" is 1 mile from the land included in its lease and a portion of the land (sec. 35) has a dry hole with "some shows."

[1] Section 2(d) of appellant's oil and gas lease terms provides that the yearly rental rate is $1 per acre or fraction thereof for leases wholly outside a KGS. In addition, section 2(d) provides that:

> (b) If the lands are wholly or partly within the known geologic structure of a producing oil or gas field:
>
> (i) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands leased [, the yearly rental rate is] $2 per acre or fraction of an acre. [Emphasis added.]

At the time appellant's lease was issued, the applicable regulation, 43 CFR 3103.3-2(b)(1) (1982), similarly provided that "with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in * * * [a KGS] and for each year thereafter," the rental rate will be $2 per acre or fraction thereof. Thus, both the regulation and the lease itself clearly state that, after proper notice, the rental rate may be increased from $1 to $2 per acre (or fraction thereof) whenever, during the term of the lease, all or part of the land is determined to be within a KGS. This comports with prior Board decisions that, where any portion of the land included in a noncompetitive oil and gas lease is determined to be within a KGS, BLM may properly require the lessee to pay the increased rental in accordance with 43 CFR 3103.3-2(b)(1) (1982). Ambra Oil & Gas Co., 58 IBLA 67 (1981), and cases cited therein.

2/ By memorandum dated Jan. 11, 1984, the District Manager, Casper District Office, Wyoming, BLM, informed the State Director, Wyoming, BLM, that certain land was determined to be within an undefined addition to the Church Buttes Field KGS, effective Jan. 6, 1984. The undefined addition to the Church Buttes KGS included a portion of the land in oil and gas lease W-82335, described as the E 1/2 sec. 34 and sec. 35, T. 15 N., R. 113 W., sixth principal meridian, Uinta County, Wyoming.

3/ Appellant also states that it is "opposed to any royalty escalation." We note, however, that the BLM decision does not address royalties. Royalty rates under the terms of the lease are therefore not changed by the BLM decision and, thus, are not at issue.

Appellant also challenges designation of the land involved herein as being within a KGS. A KGS is defined as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(1) (emphasis added). A KGS, therefore, clearly can encompass land which is only presumed to contain a productive oil or gas deposit on the basis of geological indicia, even though it is, in fact, not productive at the time of determination. Thus, the fact that the producing well used as a basis for a KGS determination is located, as appellant asserts, outside the land leased to appellant does not preclude a determination by BLM that at least a portion of the land leased to appellant contains a productive oil or gas deposit. Appellant also indicates that, in designating the KGS addition, BLM relied on the presence of a dry hole with "some shows" in sec. 35. Appellant has not demonstrated that this was the sole basis for the determination, that it was improper for BLM to rely on this evidence, or that this evidence undercuts the basis for including sec. 35 in a KGS. Moreover, even if we assume that sec. 35 was not properly included in a KGS, appellant has provided no evidence that the remaining acreage so included was not properly designated as being within a KGS. The burden is on one who challenges a KGS determination to demonstrate that the BLM determination is in error. Stephen M. Naslund, 79 IBLA 252 (1984); Ambra Oil & Gas Co., supra. Appellant has not met its burden. 4/

Accordingly, we conclude that BLM properly increased the annual rental rate for appellant's noncompetitive oil and gas lease.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Edward W. Stuebing
Administrative Judge

4/ Appellant apparently assumes that only sec. 35 has been declared to be within a KGS. This is not the case. See note 2.